

The Enforcement of Pain Relief

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Under-treatment of Pain

- Failure to evaluate and treat a patient's pain in a manner consistent with the standard of care or reasonable medical opinion.

Under-treatment of Pain

- Recognition increasing due to
 - Patients' rights movement
 - Changing standards of care & medical opinion
 - Increased emphasis on quality of care
 - Increased awareness of hospice

Who addresses under-treatment?

1. Medical Boards
2. Legislatures
3. Courts

Medical Boards

- Boards focus on preventing over-prescribing & diversion
- They encourage pain management
- No board regulations directly define or recommend penalties for undertreatment

FSMB Model Policy

Allegations of inappropriate pain management will be evaluated on an individual basis. The board will not take disciplinary action against a physician for deviating from this policy when contemporaneous medical records document reasonable cause for deviation. The physician's conduct will be evaluated to a great extent by the outcome of pain treatment, recognizing that some types of pain cannot be completely relieved, and by taking into account whether the drug used is appropriate for the diagnosis, as well as improvement in patient functioning and/or quality of life.

Medical Boards

How do they reprimand physicians for under-treatment?

- CME
- counseling

Examples

- Bilder case, Oregon 1999
 - Boards requires CME and counseling
- Whitney case, California 2003
 - Post legal changes
 - Board requires CME

State Legislatures

- Recognize poorly controlled pain as a problem
- Assert patient's rights to pain management
- Legitimizes use of opiates
- Address fear of regulatory scrutiny
 - 11 states protect physicians from disciplinary or criminal action for double effect

State Legislatures

- Define terms
 - Distinguish between addition and dependence
- Require education
 - 5 states require (CA MI OR TN WV)
 - 5 states encourage (FL NM OH RI TX)
- No states directly address under-treatment, by default deferring to medical board
- Thus, the most likely sanction for under-treatment is CME and counseling

Courts

- Involved when families dissatisfied with medical board's response to complaint
- Civil law suit

Examples

- *North Carolina*
 - *Estate of Henry James v. Hillhaven* (1991)
 - Nurse did not follow doctor's orders
 - \$7.5 million to family
- *California*
 - *Bergman v. Eden Medical Center* (1998)
 - Physician did not properly address patient's pain
 - \$1.5 million to family

Over-treatment

Federally regulated

- Clearly defined crime with clear sentencing
- A much smaller problem than under-treatment

Summary

- Public's attention to under-treatment has peaked
- Little is done about under-treatment under the current system
- Stage is set for civil lawsuits of large proportions

Questions

- Should under-treatment of pain be explicitly addressed in the:
 - Board's regulations?
 - MI Statute?
- Would that:
 - Encourage physicians to treat pain more aggressively?
 - Reduce the likelihood of lawsuits?